

12650 DETROIT AVENUE ■ 44107 ■ 216-529-6075 ■ 216-529-6806

Reference No. BC-20-141

July 20, 2020

Board of Control
City of Lakewood, Ohio 44107

Subject: Award Contract – Professional Services Contract – Re: FSA and HSA Services

Dear Members of the Committee:

Based on a review conducted by the Division of Purchasing in conjunction with the Department of Human Resources, and the attached letter of recommendation, I am submitting for your consideration this request to award a Professional Services Contract with HealthEquity in an amount not to exceed \$4,500 to provide administrative services for the city's FSA (Flexible Spending Account) at a cost of \$3.85/employee/month that are enrolled in the plan and No Charge for the city's HSA (Health Savings Account). Contract is effective July 1, 2021 through June 30, 2022 and will renew automatically unless agreed upon otherwise.

HealthEquity was chosen to perform these Professional Services based on their proposal submission.

Contracting Authority:	Ordinance 27-20 \$400,000
Contracting Balance:	\$362,000 / \$357,500
Funding:	Hospitalization Fund
Account Distribution:	600-5099-419-30-02 \$90,000
Account Balance:	\$65,433 / \$60,933
Contract Approved by Law:	Yes _____ / No _____ / PO _____ / c/c _____
Account Description	Consulting Svs
Commodity Code:	918-006
Bid Reference:	Professional Service

Kim Deyarmin
Purchasing Manager

	<u>Approved</u>	<u>Disapproved</u>	<u>Date</u>
Roman Ducu, Director of Public Works	<u>RD</u>	_____	<u>5-3-2021</u>
Brian T. Corrigan, Director of Law	<u>BTC</u>	_____	<u>5/3/2021</u>
Peter M. Rancatore, Jr., Director of Finance	<u>Peter</u>	_____	<u>5/3/2021</u>
Meghan F. George, Mayor	<u>MG</u>	_____	<u>5/3/21</u>





Order Form

Employer:

City of Lakewood - Ohio
12650 Detroit Ave.
Lakewood, OH 44107

Effective Date*: 7/1/2021
Initial Term End Date: 6/30/2024

Payment Method: ACH Debit
Payment Terms: Within 30 days of receipt of invoice
Service Charge on Overdue Amounts: 2% Per Month

Services:

Service Name	Fee Type	Fee	Description
FSA	Admin Fee	\$3.85 PPPM	Per Participant Per Month
HSA	Admin Fee	\$0.00 PAPM	Per Account Per Month
Plan Documents - Initial	Additional Service Fee	\$0.00	Administrative fees are waived for initial Plan Document and Summary Plan Description (SPD) (while employer is in implementation). Ongoing Plan Document and SPD service must be requested separately.
Non-Discrimination Testing - Initial	Additional Service Fee	\$0.00	Administrative fees are waived for initial nondiscrimination testing. Ongoing nondiscrimination testing session must be requested separately (fees may apply).
Implementation Fee	Implementation Fee	\$250.00	
Balance Transfer - Previous TPA	Additional Service Fee	\$0.00	Balance transfer from previous TPA. During plan year (mid-year transitions), HQY will work with the Employer's previous administrator to obtain election amounts and balances. At the start of their plan year and after the Grace Period, HQY will work with the previous administrator to take over balances.

Terms and Conditions:

- This Order Form is subject to HQY's General Terms and Conditions of Service that are attached hereto, and all terms defined therein shall have the same meaning in this Order Form unless otherwise specified herein.
- *This Order Form shall be effective as of 7/1/2021 (unless this Order Form is incomplete or does not match our records). Billing shall commence upon start of Service(s) or next billing period following the effective date, whichever is later.

Employer ACH Debit Authorization

Bank Name:	Key Bank
Bank Address:	1435 Warren Rd., Lakewood, OH 44107
ABA Routing No. (9 digits):	041001039
Direct Deposit Account No:	359681207668



Finance Contact Email:	John.Hribar@lakewoodoh.net
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For City of Lakewood - Ohio:

By: _____

Name: Peter M. Rancatore, Jr.

Title: Finance Director

Date: May 5, 2021

For HealthEquity, Inc.

By: _____

Name: Tyson Murdock


Title: EVP & CFO

Date: 06/04/2021

DocuSigned by:


7BBC02B307BE412...

Approved As To Legal Form:


Director of Law, City of Lakewood



General Terms and Conditions

These General Terms and Conditions govern the provision of services to you ("Employer") and are an integral part of the agreement between Employer and HEALTHEQUITY, INC., ("HQY"), which enters this agreement on its own behalf and on behalf of its Affiliates ("HQY"). HQY and Employer each may be referred to as "Party" or collectively as "Parties". An "Affiliate" is defined as any business entity or enterprise, which controls, is controlled by, or is under common control with, a Party. These General Terms and Conditions must be read in conjunction with all Schedules and Order Forms (collectively, the "Agreement"). **BY ACCESSING HQY'S EMPLOYER PORTAL OR USING ANY SERVICES, EMPLOYER AGREES THAT IT HAS READ THESE GENERAL TERMS AND CONDITIONS AND AGREES TO BE BOUND BY THE AGREEMENT.** Notwithstanding anything to the contrary contained herein, if Employer has a relationship with a health plan or other administrative entity governing the provision of any Services, such Services (including any fees associated in connection therewith) will be governed and controlled by the terms of such relationship, and nothing herein shall be intended to conflict in any manner with such relationship.

1 General.

- 1.1 Services. Employer engages HQY, and HQY agrees to be so engaged, on the terms and conditions set forth in this Agreement to provide certain services (the "Services") as selected on Employer's online application or other mutually agreed to order form or documentation (each an "Order Form"). The Parties agree that HQY may provide the Services using different technology platforms and may also modify or change technology platforms in its discretion so long as the Services are provided, and HQY shall remain responsible to provide the Services, in accordance with the applicable Schedule(s).
- 1.2 Schedules. "Schedule" refers to each of the schedules attached to these General Terms and Conditions. HQY will also provide a copy of any applicable Schedule upon reasonable request by Employer. Each Schedule will: (i) describe the tasks to be performed by the Parties in connection with the Services outlined in that Schedule and (ii) include the fees and expenses associated with the Services outlined in that Schedule (to the extent not otherwise listed in the Order Form). The Order Form selecting the Services to be provided hereunder will designate the applicability of the Schedules. Employer shall cooperate on a timely basis with HQY and perform the activities reasonably required by HQY to enable HQY to fulfill its obligations and responsibilities under this Agreement. In the event of any conflict between these General Terms and Conditions and any Schedule or Order Form to this Agreement, the applicable Order Form shall control with respect to these General Terms and Conditions and any Schedule, and any Schedule shall control with respect to these General Terms and Conditions.
- 1.3 Employer Responsibility. Employer has exclusive responsibility for providing HQY with timely and accurate information and data as necessary for HQY to provide the Services.
- 1.4 Plan Administrator; Fiduciary. With respect to employee benefit plans and programs subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), Employer acknowledges and agrees that it is the "plan administrator" and "fiduciary" within the meaning of ERISA of such employee benefit plans or programs (each a "Plan" or, collectively, the "Plans") sponsored by Employer, and that HQY is an independent contractor engaged to perform the agreed upon Services in a non-fiduciary capacity. Employer must obtain the prior written consent of HQY to all references to HQY, or to its products or services, in all communications or documents pertaining to the Plan(s) prepared by Employer, or on Employer's behalf, unless the reference identifies HQY only as a service provider or the reference is required in an IRS Form 5500 or similar filing or document required by ERISA or the Internal Revenue Code of 1986, as amended (the "Code"). Without limiting the foregoing, in no event may Employer identify or refer to HQY as "administrator," "plan administrator," "plan sponsor," "fiduciary," "plan fiduciary," or any similar title. It is understood and agreed between HQY and Employer that any such written consent of HQY shall

not be considered a representation that HQY has reviewed or approved the content of such communication or document except as to those matters set forth in this Subsection 1.4 for which consent is required. Employer has the sole responsibility to pay all fees or penalties arising from the Plans that are assessed by the Internal Revenue Service, the Department of Labor, and/or other federal, state, or local governmental agencies.

- 1.5 Implementation. HQY will provide Employer with an implementation plan and the Parties will work in good faith to implement the Services and other arrangements contemplated by this Agreement in accordance with the terms hereof and applicable laws and regulations. Each of the Parties will designate an employee to facilitate and manage the implementation in order to provide services to employees of Employer.

2 Term.

The term of this Agreement shall begin on the date set forth in the applicable Order Form or, in the event that a date is not specified in an applicable Order Form, the date that HQY receives eligibility or contribution information related to Employer's employees (the "Effective Date") and continue until the expiration or earlier termination of all Schedules.

3 Communications and Relationship Management.

- 3.1 HQY contact designation. HQY will designate a contact or team responsible for responding to inquiries and requests made by Employer.
- 3.2 Employer communications. Employer will provide HQY with a list of personnel duly authorized to receive and furnish information or instructions ("Employer Communication") and HQY may, without further review or verification, honor or act upon any Employer Communication.
- 3.3 Notices. Except for invoices and billing-related communications, any notices required or permitted to be given by one Party to the other under this Agreement shall be deemed given when (i) hand delivered and acknowledged, (ii) sent by certified or registered mail, or (iii) sent by overnight carrier, as listed below:

If to HQY:

HealthEquity, Inc.
Attention: General Counsel
15 West Scenic Pointe Drive
Suite 100
Draper, UT 84020

If to Employer:

The address as listed on the Order Form

4 Representations and Warranties; Disclaimer.

- 4.1 Applicable Laws. For purposes of this Section, "Applicable Law" means laws, regulations, rules or orders of the applicable government agency or jurisdiction to the extent such laws, regulations, rules or orders apply to the relevant Party in the performance of its obligations under the Agreement. Additionally, "Data Privacy Law" means all laws, rules, regulations, governmental requirements, codes as well as international, federal, state, and provincial laws applicable to Personal Information, and "Personal Information" means any information related to an identified or identifiable person.
- 4.2 Full Power and Authority. Each Party represents and warrants to the other Party that (i) it has the full right, power, and authority to enter into and perform its obligations under this Agreement, and (ii) no other contractual obligation exists that would prevent Employer from entering into this Agreement or performing its obligations under this Agreement.
- 4.3 HQY Warranties. HQY represents and warrants that (i) it will perform the Services in a workmanlike manner, using reasonable skill and care; (ii) it has all material permits and licenses required for it to operate its business and to perform the Services; and (iii) it can and shall comply in all material respects with Applicable Law performing its obligations under this Agreement.
- 4.4 Employer Warranties. Employer represents and warrants that (i) it has complied and will continue to comply with Applicable Law, including applicable Data Privacy Law, in performing its obligations under the

Agreement; (ii) all information provided by Employer to HQY has been, and will continue to be, collected and processed in accordance with notice, consent and other requirements of applicable Data Privacy Law; (iii) all information provided by Employer to HQY is accurate, complete and up-to-date; and (iv) it has, and will continue to have, the right to transfer, or provide access to, the Personal Information to HQY and its subprocessors, for processing consistent with the purposes contemplated in the Agreement and such processing will not breach applicable Data Privacy Law.

- 4.5 **DISCLAIMER.** NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 4, AND, EXCEPT AS SET FORTH HEREIN, EACH PARTY DISCLAIMS ANY IMPLIED OR STATUTORY WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5 Termination and Survival.

- 5.1 **Termination.** Either Party may terminate this Agreement immediately upon written notice delivered to the other Party, if at any time (i) the other Party fails to comply with any of its obligations under this Agreement in any material respect, and such Party does not cure such non-compliance within 30 days of receiving notification of such failure; (ii) the other Party has appointed for it a receiver, a general assignment is made for the benefit of the other Party's creditors, or a bankruptcy proceeding has been commenced with respect to the other Party, or (iii) any representation made or information provided by the other Party is false or misleading in any material respect when made or provided.
- 5.2 **Termination for Convenience.** Any Schedule to this Agreement can be terminated for convenience and without cause in accordance with the Termination for Convenience Provision set forth in each Schedule, as applicable.
- 5.3 **Effect of Termination; Survival.** If this Agreement is terminated, then each Schedule then in effect will also terminate. Notwithstanding anything to the contrary contained herein, Sections 1 (General), 6 (Invoicing; Fees), 7 (Confidentiality), 9 (Intellectual Property), 10 (Indemnification; limitation of liability), and 11 (Miscellaneous provisions) of these General Terms and Conditions will continue to apply after the expiration or termination of this Agreement or any Schedule hereto.

6 Invoicing and Fees.

- 6.1 **Fees and Expenses.** Employer shall pay all fees and expenses that are set forth in each Order Form or Schedule.
- 6.2 **Taxes.** The fees set forth in this Agreement are exclusive of applicable taxes. Each Party shall be responsible for its own income and gross receipt taxes. Employer shall be responsible for and shall promptly pay or reimburse HQY for the payment of all sales, use, excise, ad valorem, value-added and other similar taxes, assessments or duties imposed by any government agency (including any interest and penalties imposed thereon if HQY has provided Employer reasonable notice, of such applicable taxes prior to any assessment or accruing of interest or penalties) that are based on any Services provided by HQY pursuant to this Agreement.
- 6.3 **Invoices and Payment.** HQY shall invoice Employer for all amounts due under this Agreement on a monthly basis. Payment for invoices shall be due and payable by Employer as set forth on the Order Form. Any amounts not paid on or before their due date shall incur interest until paid at the rate equal to the lesser of the rate specified on the Order Form or the maximum amount allowed by law, prorated for any partial month.

7 Confidentiality.

- 7.1 In the general course of implementing this Agreement and providing the Services, each Party may disclose information that is considered confidential and proprietary to such Party ("Confidential Information"). Unless permitted in writing by the Party whose Confidential Information is disclosed, all Confidential Information disclosed by a Party is to be considered strictly confidential and the receiving Party shall use reasonable commercial efforts to maintain the disclosing Party's Confidential Information as strictly confidential and to require their respective officers, directors, employees and agents to maintain the confidentiality of such

information. These obligations shall not apply, however, to any information which (i) is already in the public domain at the time of disclosure or later becomes available to the public through no breach of this provision; (ii) was, as between the recipient and the disclosing Party, lawfully in the recipient's possession prior to receipt from the disclosing Party without obligation of confidentiality; (iii) is received by the recipient independently from a third party free to lawfully disclose such information to the recipient; or (iv) is subsequently independently developed by the recipient as evidenced by its business records.

- 7.2 Notwithstanding the foregoing, each Party shall have the right to disclose and disseminate Confidential Information to third parties as required by law or by a court order, provided that prior to any such disclosure or dissemination, the Party disclosing or disseminating the confidential information shall notify the other Party and the other shall have the opportunity, at its own cost, to contest such disclosure or dissemination by appropriate proceedings. HQY shall also have the right to disclose Confidential Information to its service providers as allowed by law and to the extent necessary to provide the Services or otherwise fulfill the terms of this Agreement. This provision supersedes all prior non-disclosure or confidentiality agreements entered into between the Parties, which are hereby terminated and of no further force or effect.

8 Safeguards.

At all times that HQY has access to personally identifiable information received from or on behalf of Employer, HQY will maintain reasonable safeguards, including administrative, technical, and physical controls designed to ensure the privacy, security, and confidentiality of the personally identifiable information.

9 Intellectual Property.

- 9.1 No Waiver of Rights. By entering into this Agreement, neither Party in any way agrees or implies that it is waiving any property rights it has in software, processes or other intellectual property belonging to it, its subsidiaries or affiliates, including but not limited to rights accruing by virtue of applicable federal, state, or common law protections for copyright, patent, trade secret, trademark and/or service mark rights. In the event either Party discovers a violation of such proprietary rights, that Party, for itself and on behalf of its subsidiaries and affiliates, expressly reserves the right to seek or pursue in an appropriate state or federal court all available remedies for the infringement of such rights.
- 9.2 HQY's Materials. HQY may provide to Employer material related to the Services. Any materials provided by HQY to Employer or its agents are copyrighted property of HQY and shall not be reproduced or modified by Employer without the prior written consent of HQY. Employer recognizes that HQY owns certain trademarks, service marks, logos and trade names ("HQY Marks") that identify HQY's products and services. Employer acknowledges that it has no ownership right or interest in the HQY Marks and that it will not use the HQY Marks without prior written permission.
- 9.3 Retention of Ownership. HQY retains ownership in all intellectual property of HQY used in the provision of HSA custodial services or services related thereto, and any custom development by HQY for use by Employer or its employees shall be the intellectual property of HQY.
- 9.4 Permission to Use. HQY recognizes that Employer owns certain trademarks, service marks, logos and trade names ("Employer Marks") that identify Employer's products and services. HQY acknowledges that it has no ownership right or interest in Employer Marks and that it will not use Employer Marks except as expressly contemplated by this Section 9.4 or otherwise with Employer's prior written consent. Employer hereby grants permission to HQY to use Employer's trademarks, including name and logos in connection with services provided pursuant to this Agreement. HQY may also, with the consent of Employer, use such marks for marketing and promotional materials. Employer will provide or make available to HQY approved formats and any guidelines for use of Employer's trademarks, including the name or logos, and the trademarks shall be used only consistent with the supplied formats and guidelines.

10 Indemnification; Limitation of Liability.

- 10.1 HQY Indemnity. HQY shall defend, indemnify and hold harmless Employer, Employer's Affiliates and all of Employer's (and Employer's Affiliates') directors, officers, employees and agents (the "Employer Group")

from and against all Losses asserted by any party who is not a party to this Agreement to the extent caused by HQY's breach of this Agreement, gross negligence or willful misconduct; provided, however, that HQY shall not defend, indemnify or hold the Employer Group harmless for Losses, in each case to the extent arising out of Employer's breach of this Agreement, negligence, or willful misconduct.

- 10.2 Employer Indemnity. ~~Employer shall indemnify and hold harmless HQY, its affiliates and all directors, officers, employees and agents of HQY and its affiliates (the "HQY Group") from and against all claims, liabilities, losses, damages and expenses, including attorneys' fees (collectively "Losses"), asserted by any party who is not a party to this Agreement, and arising out of Employer's breach of this Agreement, negligence or willful misconduct or arising out of any other cause related to this Agreement; provided, however, Employer shall not be obligated to defend, indemnify or hold the HQY Group harmless for Losses to the extent such losses are caused by HQY's breach of this Agreement, gross negligence or willful misconduct.~~ Notwithstanding any other provision of the Agreement, HQY will not be responsible for claims, damages or liabilities resulting from: (i) acts or omissions based on instructions or directions received from Employer and its agents, representatives, or employees; (ii) errors caused by incomplete, inaccurate or untimely information provided by Employer and its agents, representatives or employees; or (iii) failure of Employer to perform its obligations as required by this Agreement.
- 10.3 Notification and Defense. The Party seeking indemnification under this Agreement (the "Indemnified Party") shall give the Party responsible for indemnification (the "Indemnifying Party") written notice of each claim, if any, promptly after the Indemnified Party's first knowledge thereof. The Indemnifying Party may direct the defense of its interests; provided, however, the Indemnified Party is entitled to retain counsel to provide for its own defense unless or until provided reasonable notice by the Indemnifying Party of its intent to direct the defense.
- 10.4 Limitation of Liability. Except for damages incurred or arising out of or due to gross negligence, willful misconduct or fraud of the other Party, the aggregate liability of either Party to the other Party from any and all actions relating to the subject matter of this Agreement shall not exceed fees actually paid by Employer to HQY under this Agreement in the twelve months preceding the date on which the cause of action arose. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IN THE EVENT THAT IT IS ADVISED OF THE POSSIBILITY THAT SUCH DAMAGE MAY ARISE, OCCUR OR RESULT.

11 Miscellaneous Provisions.

- 11.1 Entire Agreement. This Agreement, including any Order Forms, Schedules, exhibits, and attachments hereto, sets forth the entire understanding of the Parties and supersedes any and all other agreements, either oral or written, between the Parties with respect to the subject matter hereof (including any non-disclosure or confidentiality agreements entered into between the Parties), and no other agreement, statement or promise relating to the subject matter of this Agreement will be valid or binding. Unless otherwise indicated, this Agreement supersedes and replaces any prior Employer Services Agreement, or similar agreement, between the Parties.
- 11.2 Headings. The section headings contained in this Agreement are supplied for convenience and reference purposes only and shall not affect the meaning or interpretation of the terms.
- 11.3 Amendments. HQY may amend this Agreement and any Schedule from time to time by providing written notice of such amendment to Employer (an "Amendment Notice"). Such amendment shall be effective upon receipt of the Amendment Notice and Employer's continued use of the Services.
- 11.4 Waiver. The failure by a Party to exercise any right or obligation shall not be deemed to be a waiver of such right or obligation.
- 11.5 Severability. If any portion of this Agreement shall, for any reason, be invalid or unenforceable, such portion or portions shall be ineffective only to the extent of such invalidity or unenforceability, and the remaining portion or portions shall nevertheless be valid, enforceable and of full force and effect.
- 11.6 Third Party Sender. To the extent applicable as a Third Party Sender under National Automated Clearing House Association ("NACHA") rules and regulations, Employer acknowledges and agrees that HQY must perform a certain level of due diligence on Employer and that part of such diligence requires that Employer make certain representations and warranties in order for HQY to be able to originate ACH transactions on Employer's behalf. Accordingly, Employer (i) authorizes HQY to originate transactions on Employer's

behalf, (ii) agrees to be bound by applicable NACHA rules, (iii) agrees not to originate transactions that violate U.S. laws, and (iv) agrees to provide written notice to HQY if there are any restrictions on the type of transactions that may be originated and, if there are, to describe such restrictions. Employer further acknowledges and agrees that in addition to other termination rights outlined herein, HQY has the right to terminate or suspend the Services if Employer violates any applicable NACHA rules. Employer additionally acknowledges and agrees that HQY and the originating depository financial institution have the right to audit Employer's compliance with the NACHA Rules and the terms of this provision with reasonable notice, during normal business hours.

- 11.7 Escheatment. Employer shall be solely responsible for compliance with all escheatment obligations.
- 11.8 Professional Advice. Although HQY may provide technical or other assistance on issues related to this Agreement, or to health savings accounts, flexible spending accounts, healthcare reimbursement arrangements and other services in general, HQY is not providing and cannot give Employer or any employee thereof legal, tax, financial, or other professional advice. Employer agrees that it is not relying on HQY or any of its affiliates for any such advice and is not expecting HQY to provide professional advice to its employees. Employer is solely responsible for the selection and engagement of HQY to provide services on its behalf and for ensuring Employer's compliance with applicable law.
- 11.9 Assignment. Either Party may assign this Agreement to any Affiliate or as part of the sale of any substantial portion of its assets, or pursuant to any merger, consolidation or other reorganization, without the other Party's prior written consent. Otherwise, neither Party may assign its rights and responsibilities under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 11.10 Force Majeure. Neither Party shall be liable for any damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to acts of God, government restrictions (including the denial or cancellation of any necessary license), wars, strikes, insurrections, infectious disease outbreaks and/or any other cause beyond the reasonable control of the Party whose performance is affected.
- 11.11 Beneficiaries. No third parties shall have the benefit of or any rights under any of the provisions of this Agreement.
- 11.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah without giving effect to its conflicts of law provisions, to the extent not governed or interpreted in accordance with federal law or regulations. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of, and venue in, the federal and/or state courts in the State of Utah, and the appropriate courts of appeal from such courts, for determining any dispute concerning the Agreement.

Schedule A

Health Savings Accounts (HSAs)

This HSA Schedule is incorporated into and made a part of the Agreement. Capitalized terms used in this HSA Schedule, but not defined herein, shall have the meanings ascribed to them in the Terms and Conditions to the Agreement.

1 Clarification of roles, relationships, and applicable law.

- 1.1 **Roles and Relationships.** Employer is the sponsor of a high deductible health plan ("HDHP") that is compatible with health savings accounts ("HSAs"), as defined in §223 of the Internal Revenue Code ("Code"). Employer, as permitted by DOL FAB 2004-01 and 2006-02, desires to (i) facilitate the opening of HSAs for or on behalf of eligible employees (each, an "Account Holder"), (ii) make Employer contributions and forward employee payroll reduction contributions to HSAs owned by Account Holders, and (iii) pay certain fees related to HSA implementation and maintenance. HQY is an IRS authorized non-bank trustee operating as a custodian of HSAs in accordance with the provisions of Code §223(d)(1)(B) and Employer has selected HQY as its preferred custodian for Account Holders.
- 1.2 **ERISA.** It is the intent of the Parties that HSAs will (i) not be administered as, or otherwise considered, an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 as amended ("ERISA"), and (ii) not be a part of the HDHP. The assets held in custody by HQY in HSAs, or in connection with HSAs, shall not be plan assets subject to the provisions of ERISA. In order to avoid the implication that Employer has fiduciary obligations with regard to HSAs and other ERISA implications, Employer agrees to limit its involvement with HSAs in accordance with DOL FAB 2006-02, and Employer will take no action that will or could arguably cause an HSA to become subject to ERISA.
- 1.3 **Direct relationship with Account Holders.** HQY provides HSA custodial services directly to Account Holders, subject to applicable federal and state laws and regulations, and pursuant to the terms of a Custodial Agreement that governs the relationship between HQY and each Account Holder. Custodial services are overseen by the IRS and other regulatory authorities, and are not subject to Employer's oversight. Employer is not a party to the Custodial Agreement or a third-party beneficiary thereof, and nothing in this Agreement will affect, modify, or amend the terms governing the services provided by HQY to Account Holders or to account holders in general.
- 1.4 **GLBA.** HQY and HSAs are subject to the privacy and security protections of the Gramm-Leach-Bliley Act and applicable state laws (collectively, "GLBA") and HQY is required by GLBA to safeguard each Account Holder's nonpublic personal information ("NPI"), which includes information HQY collects or generates in the course of offering custodial services to an Account Holder, including Account Holder information collected by Employer and transmitted to HQY pursuant to the Agreement. HQY may disclose NPI to Employer only when permitted under GLBA. For the avoidance of doubt, Personal Information provided by or through an employer, health plan or health insurer to HQY (in its capacity as an HSA custodian) for HSA-related purposes is not provided as a plan service under the BAA (as defined below). Rather such Personal Information constitutes account information subject to GLBA and is not considered HIPAA protected health information ("PHI").
- 1.5 **HIPAA and integrated claims.** Account Holders often desire to view and use adjudicated medical, dental, vision, pharmacy, and/or behavioral health claim information (including data that would constitute protected health information in the hands of a covered entity or business associate) ("Claims Data") in connection with their HSAs for convenient payment, reimbursement, current and long-term distribution substantiation, and other tax or personal recordkeeping purposes. Likewise, employers often seek to facilitate the sharing of such information with HSAs to enhance the value of HSAs for their employees. If Employer elects the optional feature whereby Claims Data are integrated with HSAs, HQY, operating as a business associate under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and the regulations promulgated thereunder (together, "HIPAA") (and not in its capacity as a custodian of HSAs) and in accordance with the Business Associate Agreement that is linked and incorporated into the Agreement (the "Business Associate Agreement"), will (i) receive and maintain Claims Data from Employer's health plan, health insurer, or third

party administrator; (ii) receive and process individual authorizations from Account Holders which permit disclosure of Claims Data to their respective HSAs; and (iii) disclose to the appropriate HSAs the Claims Data of Account Holders who have executed authorizations permitting such disclosure. Any Claims Data displayed on the HQY Portal for HSA related purposes are displayed pursuant to an authorization, not as a plan service subject to the terms of the Business Associate Agreement.

- 1.6 HIPAA and custodial services. Except as set forth in Section 1.5, data received by HQY in connection with its administration of HSAs will be received by HQY in its capacity as a custodian, and not as a business associate. Such data will be subject to the privacy and security protections of GLBA.

2 HSA opening and maintenance.

- 2.1 Eligibility file. From time to time, Employer will (directly or through an agent) either send an electronic file or upload to HQY's website (each, an "Eligibility File") information pertaining to: (i) employees who have submitted HSA applications through Employer's benefits enrollment system and instructed Employer to open HSAs on their behalf, or (ii) employees for whom Employer is requesting that HSAs be opened without the employees' affirmative consent.
- 2.2 HSA opening and maintenance. Based on the information provided in an Eligibility File, and subject to federal customer identification and "know your customer" requirements and restrictions (as defined by the USA PATRIOT Act), HQY will open and maintain HSAs for Account Holders under the terms of the Custodial Agreement.
- 2.3 Employee disassociation. Employer will include on the Eligibility File the name and termination date of any Account Holder who (i) has terminated employment with Employer, or (ii) is no longer eligible to contribute to a HSA. Upon receipt and processing of such updated Eligibility File, or a notice provided by an Account Holder, HQY will promptly disassociate the Account Holder from Employer in its systems.

3 Contributions.

- 3.1 Sending of funds. Employer will forward Employer contributions, Account Holder payroll reduction contributions, and other contributions (such as those associated with a wellness program) to HQY as soon as administratively feasible and in a form and format agreed upon by the Parties. During the term of the Agreement, HQY shall be the exclusive administrator and custodian of HSAs to which Employer makes payroll reduction contributions.
- 3.2 Allocation file. Simultaneously with (or prior to) funds transmission, Employer will send information to HQY via an electronic file or through HQY's website that indicates how contributions should be allocated to Account Holders' HSAs, and will cooperate promptly and fully with HQY in connection with all required reconciliations or error corrections. HQY will have no liability for any file or funds not received by HQY, for any delay in transmitting funds, or for any error in allocating contributions to HSAs in reliance on data or instructions provided by Employer.
- 3.3 Posting to HSAs. HQY will post contributions to HSAs within a commercially reasonable time after receipt of the allocation file and good funds.
- 3.4 Accelerated contributions. If Employer elects the optional Balance Booster™ feature, it will be provided in accordance with Schedule 1 to this HSA Schedule (fee schedule included on the Schedule).
- 3.5 Non-forfeitable of Employer contributions. Employer contributions to HSAs are non-forfeitable and subject to rules restricting recoupment described in IRS Notice 2008-59, Q/A 23-25 and any relevant letters or guidance provided by the IRS.

4 Term; Termination for convenience.

- 4.1 Term. The term of this Schedule shall begin on the Order Form Effective Date and continue through and including the Order Form Term (the "Initial Term"). This Schedule will thereafter automatically renew for additional 12 month terms unless either Party terminates this Schedule in accordance with Section 4.2. HQY may, in its sole discretion, continue to provide health savings account services to Account Holders if this Schedule is terminated for any reason. Notwithstanding the foregoing, if the entire Agreement is terminated at any time, the term of this Schedule shall terminate as of the date on which the entire

Agreement is terminated.

- 4.2 Termination for convenience. Following the Initial Term, either Party may terminate this Schedule at any time, subject to providing 90 days' prior written notice.

5 Fees.

Employer agrees to pay the fees set forth below, except to the extent that Employer instructs HQY to charge the fees to Account Holders. The fees described in this Section 5 are in addition to fees charged directly to HSAs and other compensation that HQY receives on account of HSAs, as further described in the Custodial Agreement. Employer has reviewed the fees and the compensation that HQY receives for its services and determined that the compensation HQY receives is reasonable for the services it provides. Employer has further determined that each of the services is necessary for the establishment and maintenance of the HSAs.

5.1 One-time implementation fee.

Item	Fee
Project management; Creation and execution of test plan; Coordination of marketing materials (not-including customization); Sales support and training	Set forth in Order Form or provided by health plan, retirement plan recordkeeper, or other administrative entity

5.2 HSA maintenance fees.

If Employer undertakes to pay account maintenance or other fees for Account Holders, it will remain obligated to pay such fees so long as such Account Holder is not disassociated from Employer. Account Holders are the primary obligor for the payment of fees, and if Employer ceases to pay such fees, they will be charged to Account Holders. Unless otherwise set forth herein, the fees for the Services under this Schedule shall be as set forth in the Order Form.

5.3 Fees charged to Employer for atypical transactions.

Item	Fee
Insufficient Funds for Contribution (e.g., failed ACH; bounced check)	\$20/ transaction
Employer Contribution Refund Request	\$20/ transaction
Manual Contribution Processing	\$20 per event (no fee if instructions are submitted online or via electronic file)
Funding via ACH debit, PPD/direct deposit, checks	Free
Funding via Wire/ACH push	\$350 per year (unless Employer has 1,000 eligible employees or 500 accounts, in which case it is free)
Premium-only plans	\$250

5.4 File integration fees.

File integration enhances the overall experience through automating the way data is passed to HQY in connection with eligibility, payroll, and claim integration. File integration is available only if the applicable minimum threshold is met.

File types	Benefit eligible employee minimum threshold per file	Implementation fee per file
HSA contribution file	0	None
Eligibility file	1,000	None

Claims file	1,000	None
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- Pre-approved files which meet a specific criteria as outlined on the integrated file list will not incur an implementation fee. Custom files may incur an implementation fee not to exceed \$2,500 per file. Company's Implementation Manager or Account Manager can discuss exceptions.
- All data sources must be engaged 90 days prior to the requested file's go-live date. Employer is responsible for introducing HQY to the data source contact. HQY will confirm the data source is able to pass the file in either HQY's standard format or an existing format HQY already receives from that data source. If a new mapping is required or an existing mapping has to be altered, the scope must be estimated and all applicable costs must be agreed upon before HQY will proceed.
- HQY must have clean test files with valid test data from the data source a minimum of 30 days prior to the date the file is expected to be live in production (60 days prior to plan year start).
- Benefit eligible employees are determined by taking total benefit eligible population minus any population that will not have access to choose a HQY product (e.g., any excluded employee locations).

5.5 Custom communications and materials.

The Parties will agree to the form and contents of any custom communications or materials and the fees associated therewith, which may change from time to time.

5.6 Other Compensation.

Employer funds associated with the Program (including pre-funding) are deposited in an omnibus processing account with a federally insured financial institution until the funds are contributed to HSAs as defined by the Program. The account is titled "HealthEquity Omnibus Account for the Benefit of Employers" (or similar title) and is subdivided as HealthEquity determines appropriate to maintain separate records for each employer. Interest, if any, accrued in the account is retained by HealthEquity as part of its compensation for administering the Program.

(SCHEDULE A)

Schedule A-1

Accelerated Contributions (Balance Booster™)

This Schedule A-1 shall be incorporated into the Agreement and Schedule A - Health Savings Accounts (HSAs) only if selected in the Agreement or relevant Order Form.

The Parties desire to enable Employer to make contributions to HSAs outside of the normal contribution cycle pursuant to HQY's program known as HSA Balance Booster™ (the "Program"). This Schedule A-1 to the HSA Schedule (this "Schedule A-1") sets for the terms and conditions by which HQY will administer the Program.

1 The program.

- 1.1 Setup. Prior to initiating the Program and in advance of each calendar year, HQY shall provide a planned contribution file form (the "Planned Contribution File Form") to Employer. Employer will complete the form in accordance with HQY's instructions and the standard file specifications provided to Employer by HQY from time to time, setting forth the then-available features and options of the Program. The Program shall be designed, implemented and administered in accordance with the elections made in the Planned Contribution File Form delivered to HQY by Employer. HQY shall rely on the Planned Contribution File Form delivered by Employer in developing the systems and platform for the administration of the Program. Once delivered to HQY, the Planned Contribution File Form shall be an irrevocable election by Employer (for the calendar year identified in the form) for HQY to design, implement and administer the Program in accordance with elections made therein. HQY shall have no responsibility for liabilities, penalties, or claims that result from Employer's failure to provide timely and accurate Planned Contribution File Forms. Employer will deliver the Planned Contribution File Form to HQY at least weekly or in conjunction with the Eligibility File if an Account Holder must be added or removed from participation in the Program or the Annual HSA Balance Booster Amount of an Account Holder must be changed. "Annual HSA Balance Booster Amount" shall mean, with respect to each Account Holder, the dollar amount of planned HSA contributions Employer shall make available to such Account Holder as a contribution to such Account Holder's HSA outside of the normal contribution cycle through the Program in a calendar year as conclusively set forth on the Planned Contribution File Form delivered to HQY by Employer from time to time. Employer shall promptly reimburse HQY for any costs incurred by the HQY as a result of any inaccurate, incomplete or erroneous data included in the Planned Contribution File Form. Employer shall provide HQY with timely, accurate and complete information regarding the methodology used by Employer to determine each Account Holder's Annual HSA Balance Booster Amount as well as where Account Holders may locate information regarding Employer's policies and procedures relating to the Program Information (collectively, "Program Information") in accordance with HQY's instructions and the standard file specifications provided to Employer by HQY from time to time. HQY will reasonably assist Employer in disseminating Program Information to Account Holders through the development of educational materials and when contacted by Account Holders regarding the Program.
- 1.2 Prefund Account. Employer shall fund a non-interest bearing account maintained by HQY from which all Advance Contributions (as defined below) shall be made (such account, the "Prefund Account"). Employer shall maintain a balance in the Prefund Account of not less than 4% of the aggregate Advance Available Amount of all Account Holders or such other amount as determined by mutual agreement of HQY and Employer from time to time (the "Required Amount"). HQY shall generate a bi-weekly invoice setting for the amount to be funded by Employer to replenish the Prefund Account to the Required Amount and reimburse HQY for any amounts advanced to the Prefund Account by HQY in respect of requested Advance Contributions made in excess of the available balance of the Prefund Account, which such amount shall be funded by Employer within 2 days of receipt of the invoice in accordance with the directions set forth therein. Notwithstanding anything to the contrary contained herein, HQY shall not be required to administer any Advance Contributions under the Program, if the balance of the Prefund Account is less than a requested Advance Contribution. If upon the termination or non-renewal of this Agreement there are any funds in the

Prefund Account, HQY shall transfer such funds to an account designated to HQY by Employer in writing.

1.3 Administration.

- (a) Subject to the terms and conditions of this Schedule A-1 and pursuant to the Program, HQY shall administer the making of contributions by Employer to Account Holders' HSAs outside of the normal contribution cycle established by Employer (any such contribution, an "Advance Contribution"). The Program shall be initiated on a date mutually agreed to by HQY and Employer and shall run on a calendar year basis. Each Advance Contribution shall be funded from the Prefund Account and shall reduce the balance of the Prefund Account on a dollar for dollar basis.
- (b) Pursuant to the Program, each Account Holder may cause Employer to make an Advance Contribution from time to time to such Account Holder's HSA in an amount up to such Account Holder's Annual HSA Balance Booster Amount less any contributions made to such Account Holder's HSA by Employer (including any Advance Contributions) in the then current calendar year (such amount from time to time, the "Advance Available Amount"). In connection with any requested distribution by an Account Holder (whether via debt card, direct payment request to a service provider, direct distribution of funds held in the HSA to the Account Holder or otherwise) an amount of the Advance Available Amount equal to (a) the amount of such requested distribution, less (b) the then existing cash balance in such Account Holder's HSA, shall automatically be contributed to the Account Holder's HSA by Employer from the Prefund Account and applied to such requested distribution if (i) the amount of such requested distribution is greater than the then existing cash balance in such Account Holder's HSA, (ii) such Account Holder's HSA investment balance is zero or less, and (iii) the amount of such requested distribution is less than, or equal to, the sum of (aa) the then existing cash balance in such Account Holder's HSA, and (bb) the Advance Available Amount.
- (c) Following any Advance Contribution to an Account Holder's HSA, HQY shall first apply any regularly scheduled payroll contribution (whether an "employer contribution" or "employee contribution") to be made by Employer to such Account Holder's HSA to the Prefund Account, rather than such Account Holder's HSA, until the amount applied to the Prefund Account is equal to the aggregate amount of Advance Contributions made to the Account Holder, without duplication. Once an amount equal to the Advance Contribution made to such Account Holder's HSA has been funded to the Prefund Account, any and all additional payroll contributions shall be included in the Account Holder's HSA. For the avoidance of doubt, any contribution made by an Account Holder or a third party to the HSA by personal check or electronic funds transfer drawn will not be applied to the Prefund Account to offset outstanding Advanced Contributions.

1.4 Reporting. HQY shall make available to Employer regular reporting regarding the Program.

1.5 Employer Representative. Employer shall designate at least one authorized employee who has familiarity with Employer's HSA program that shall be HQY's primary point of contact in connection with the administration of the Program.

2 Employer's other responsibilities and acknowledgments.

- 2.1 Employer shall ensure that each Planned Contribution File Form sent to HQY is timely, accurate, complete, and free of errors HQY shall not be liable for making a contribution to individuals who were erroneously designated by Employer as eligible to participate in the Program.
- 2.2 Employer shall notify HQY of new and terminated Account Holders, as well as any changes in Annual HSA Balance Booster Amounts. For terminated Account Holders, Employer will provide an Annual HSA Balance Booster Amount of zero (0) so that no further Advanced Contributions will be made. HQY is not liable for Advanced Contributions made after a termination date but prior to receipt of the update of the Annual HSA Balance Booster Amount to zero (0).
- 2.3 Employer shall be liable for any outstanding Advanced Contributions for Account Holders and terminated Account Holders. Employer shall determine its policy for seeking any repayment of outstanding Advanced Contributions. HQY will not be responsible for notifying or collecting from Account Holders any amount of the Advance Contributions.
- 2.4 Employer expressly acknowledges and agrees that (a) no services or communications provided by HQY in

connection with the matters contemplated by this Schedule A-1, whether such services or communications where performed or provided before or after the implementation of the Program or execution of the Agreement, may be construed as tax, legal or financial advice, (b) Employer has consulted professional advisors in connection with the matters contemplated by this Schedule A-1, including without limitation the design, implementation and administration of the Program and recoverability of Advance Contributions, (c) HQY shall have no responsibility for collecting any Advance Contributions made to any Account Holder, and (d) Advance Contributions made to an Account Holder's HSA are not subject to forfeiture or claw back.

3 Fees.

The following fees shall be paid by Employer in connection with the Program.

- Implementation and maintenance fees.

Item	Fee
Setup Fee – First year program implementation*	\$1,000
Annual Fee - End of each calendar year	\$500
* Any Program customizations (e.g., Balance Booster Enrollment file, communications) requested by Company will be considered and quoted on a case-by-case basis.	

- Ongoing administration fees. Unless otherwise set forth herein, the fees for the Services under this Schedule shall be as set forth in the Order Form.

3.1 Other compensation.

Employer funds associated with the Program (including pre-funding) are deposited in an omnibus processing account with a federally insured financial institution until the funds are contributed to HSAs as defined by the Program. The account is titled "HQY Omnibus Account for the Benefit of Employers" (or similar title) and is subdivided as HQY determines appropriate to maintain separate records for each employer. Interest, if any, accrued in the account is retained by HQY as part of its compensation for administering the Program.

Schedule B
Reimbursement Arrangements (RAs)

This Reimbursement Arrangements (RAs) Schedule to the Agreement sets forth the services provided for HRAs, FSAs, and DCRAs (each defined below), and is incorporated into and made a part of the Agreement. Capitalized terms used in this RA Schedule, but not defined herein, shall have the meanings ascribed to them in the Terms and Conditions to the Agreement.

1 Clarification of roles, relationships, and applicable law.

- 1.1 Roles and Relationships. Employer, operating as the sponsor of a health plan, “plan administrator” and “fiduciary” within the meaning of the Employee Retirement Income Security Act of 1974, as amended, desires to provide certain health related reimbursement arrangements and/or other work-related benefits to its eligible employees (“Participants”). HQY provides third party administration (“TPA”) services for health reimbursement arrangements as defined in IRS Notice 2002-45 (“HRAs”), health flexible spending arrangements as defined in 26 USC § 125 and the regulations thereunder (“FSAs”), dependent care assistance programs as defined in 26 USC § 129 and the regulations thereunder (“DCRA”), and limited-purpose FSAs and post-deductible HRAs (each within the meaning of Rev. Rul. 2004-45).
- 1.2 Directed TPA. HQY shall operate as a directed third party administrator (“TPA”) under the Agreement and this Schedule, and not as a plan administrator, plan fiduciary, or claims fiduciary. As such, Employer shall be responsible for the proper administration of the plan, the direction of HQY’s activities in accordance with the plan documents, compliance with legal requirements applicable to the plan and its administration, and ensuring that the TPA services are accurately reflected in the plan documents.
- 1.3 HIPAA. Unless otherwise indicated, Participant data disclosed to or held by HQY under this Schedule is governed by or subject to the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and the regulations promulgated thereunder (together, “HIPAA”). As such, HQY shall operate as a business associate (as defined by HIPAA) to Employer or its health plan in the provision of TPA services to the plan. Participant data is considered HIPAA protected health information (“PHI”) and subject to the protections set forth in the Business Associate Agreement entered between HQY and Employer, limited by applicable record retention requirements imposed by the IRS for tax advantaged accounts and arrangements.

2 Term; Termination for Convenience.

- 2.1 Term. The term of this Schedule shall begin on the Order Form Effective Date and continue through and including the Order Form Term (the “Initial Term”). This Schedule will thereafter automatically renew for additional 12 month terms unless either Party terminates this Schedule in accordance with Section 2.2. Notwithstanding the foregoing, if the entire Agreement is terminated at any time, the term of this Schedule shall terminate as of the date on which the entire Agreement is terminated.
- 2.2 Termination for Convenience. Following the Initial Term, either Party may terminate this Schedule at any time, subject to providing 90 days’ prior written notice.
- 2.3 Suspension of Performance; Other Termination. The Parties acknowledge and agree that Employer’s failure to pay the Fees for the TPA services when such Fees are due shall constitute a material breach of this Agreement and in addition to any other rights HQY has when such amount is due HQY may at its election, and without waiving its right to payment, cease performing services under this Schedule until such Fees are paid or terminate the Agreement or this Schedule.

3 HQY duties.

Plan setup	<ul style="list-style-type: none">• Provide a plan setup worksheet for Employer to choose among certain features
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	<p>and options, subject to availability on HQY's system.</p> <ul style="list-style-type: none"> For HRAs, provide a Summary of Benefits and Coverage (SBC) template to Employer, along with sample language. Optional: Provide a basic plan document template to Employer, based on, among others, the features and options chosen. Such template is not customizable. <p><u>Limitations</u></p> <ul style="list-style-type: none"> Employer is responsible for legal review and adoption of the plan in accordance to the requirements of applicable law. HQY will not provide legal advice as to which options or features Employer may wish to implement or with respect to compliance with applicable law.
Enrollment	<ul style="list-style-type: none"> HQY will instruct Employer on how to provide timely accurate and complete enrollment information (via file or portal). Once such information is received, HQY shall send the welcome kit and debit card (if elected and available). The debit card may be sent under separate cover (if elected). HQY is not responsible for sending privacy policies or notices related to reimbursement arrangements.
Recording contributions	<ul style="list-style-type: none"> If DCRA is elected as a service, Employer shall provide HQY with each Participant's DCRA elections, the corresponding payroll data, and any Employer contributions, so that HQY can create a proper account balance for the DCRA. DCRA payments are not released until funds are credited to the account. For FSAs, HQY can record payroll contributions based on the payroll frequency provided by Employer.
Individual account management / Member Services	<ul style="list-style-type: none"> HQY shall host a Participant accessible website to help Participants manage their Reimbursement Account online where they can, among other activities: <ul style="list-style-type: none"> access their account balance, distribution history, and transaction activities; review, enter and pay claims; update their email preferences; and download account servicing (e.g., distribution request) forms. The website shall be made available 24/7 except for routine maintenance. Participants must have a computing device that is capable of using secure HTTP (HTTPS) to use the Participants-only area of the website. HQY shall make available to Participants a 24/7 toll-free number (in the US) to access HQY Member Services Specialists. HQY shall make available monthly statements to Participants to view and download from the website. There shall be a charge to Participants for paper statements.
Distribution and use of plan funds	<ul style="list-style-type: none"> If the Employer elected, HQY shall send to Participants debit cards (debit cards optional), available with health FSAs and limited set of HRA plans) to access Reimbursement Account funds at merchants offering medical-related (including pharmacy, dental, and vision) qualified products and services. Whether the debit card can be used at any particular merchant depends on the merchant's coding under the debit card processing system. HQY shall make available a directed payment mechanism on the website whereby Participants can direct their funds to be paid to one or more service providers. Participants are solely responsible to: <ul style="list-style-type: none"> provide complete and accurate payee and identification so that payment can be properly credited by the provider; and

	<ul style="list-style-type: none"> b. ensure sufficient funds and time for HQY to make such directed payments. • Participants may request distribution of their funds by completing a claim form, together with the documentation required by law. <ul style="list-style-type: none"> a. All claim forms and supporting documents must be in English, or if not in English, accompanied by an English translation. HQY does not provide translation services. b. Participants shall receive distributions via electronic means at no cost to the Participants. Participants who request paper checks will be charged a fee per check. • If applicable thresholds are met, HQY shall provide a mechanism to securely receive adjudicated claims files from Employer's health plan(s). HQY shall populate Participants accounts with the claim data so that Participants may pay the patient responsibility portion of adjudicated claims directly from the account. • If Participant's account balance is insufficient to pay all claims, debit card transactions will take priority over the competing demand for funds, followed by directed payments. • HQY will attempt to auto-substantiate card transactions using IRS approved methods. If auto-substantiation cannot be achieved, HQY will send a notice to Participant at 30 and 90 days after debit card use asking for documentation. • HQY does not turn off debit cards. Employer is responsible for determining how to handle collection from Participants of any amounts that the Participant has not substantiated.
Participant education	<ul style="list-style-type: none"> • HQY shall make information available, either directly or through the health plan, to help Participants save and spend their account balances. This may include Employer specific educational programs and e-mail based messaging (subject to HQY having accurate e-mail addresses for e-mail distribution).
Reports to Employer	<ul style="list-style-type: none"> • HQY shall make reports available to Employer that include a summary roll-up of account transactions, a funding ledger, and claims detail, including overpayments.
Non-discrimination testing	<p>If Employer elects this service by providing written notice to HQY, HQY will run the test through a third party tool using the data provided by Employer. The tool provides basic recommendations for high-level plan adjustments to be made in order to keep the plan from being discriminatory. Employer considers the feedback and alters the plan accordingly. Employer is responsible for plan design and compliance. HQY does not monitor plan compliance matters.</p>

4 Employer duties.

Program setup	<ul style="list-style-type: none"> • Complete a plan setup worksheet for Employer to choose among certain features and options, subject to availability on HQY's system.
Designate contact	<ul style="list-style-type: none"> • Designate at least one employee as the primary contact who has familiarity with the Employer's benefits offering; the contact shall provide HQY with advance notice before any changes to the Employer's benefits offering become effective; the contact shall also be available to consult with HQY from time to time as reasonably necessary for HQY to provide the services described herein. For the avoidance of doubt, no change shall become effective unless and until accepted and programmed by HQY.
Prepare and distribute materials	<ul style="list-style-type: none"> • Ensure compliance with all requirements of ERISA, the Internal Revenue Code, and other applicable law, including maintaining plan documents and the preparation, distribution, and review of Summary Plan Description, Summary of Benefits and Coverage, and any other program materials to Participants.

Eligibility and contribution Data	<ul style="list-style-type: none"> Ensure that all eligibility and contribution data files that are sent to HQY or data entries made on HQY's system are timely, accurate, complete, and free of errors. HQY will not be responsible for any liabilities, penalties, or losses due to data or information that is untimely, inaccurate, otherwise invalid. Employer shall pay HQY for all costs due to any inaccurate, incomplete or erroneous data. For example, if Employer enrolls individuals who are not eligible to participate in a Reimbursement Account, Employer shall pay HQY for (i) time and materials to collect any disbursements already made to such individuals (if legally permitted); (ii) notifications to affected individuals; and (iii) debit card cancellation fees. The monthly fees for such ineligible individuals are (a) still payable if not already paid, or (b) if paid, are not refundable or creditable against future invoices.
Claim data	<ul style="list-style-type: none"> Ensure that its health plan(s) provide claim files that are timely, accurate, complete, and free of errors. If disbursements are made because Employer or its delegates have provided information that is untimely, inaccurate, incomplete, or otherwise erroneous, Employer agrees that HQY is not responsible for recovering the funds from any payee.
Payment of claims invoices	<ul style="list-style-type: none"> Employer is responsible for paying claim invoices. If Employer does not pay an invoice, then HQY may take appropriate remediation efforts, such as (i) deactivating cards or (ii) terminating services.
Prefunding	<ul style="list-style-type: none"> Employer shall timely provide to HQY all benefit claims pre-funding amounts. Employer acknowledges and agrees that all benefits claim pre-funding amounts submitted by Employer to HQY: (i) shall be comprised of Employer's general assets (and will be treated as such by HQY); (ii) does not consist of Plan assets or participant/employee contributions, whether made by salary reduction or otherwise, within the meaning of ERISA, without regard to whether ERISA applies, and is not otherwise subject to any restrictions; and (iii) shall not be segregated or set aside in a trust or escrow account by HQY. Employer agrees to pay HQY the entire amount delivered, or deliverable, to participants in all Plans or programs, regardless of whether Employer collects sufficient payroll deductions from Employer's participants. If it is determined that the amount of prefunding requested from the Employer is not sufficient, HQY may request additional prefunding.
Legal compliance	<ul style="list-style-type: none"> Employer is responsible for compliance with applicable law with respect to the services provided by HQY under this Schedule, including, without limitation, the review and approval of HQY's form documents and templates, and HQY's administration process.

5 Fees. Unless otherwise set forth herein, the fees for the Services under this Schedule shall be as set forth in the Order Form.

- PPPM means per participant per month. HQY may give volume discounts based on Employer's account total. Fees are set at initial enrollment based on account volume. The Monthly Administration PPPM may be reset annually each February based on its ending January account volume.
- HQY charges only one PPPM fee even if a Participant has more than one FSA and/or HRA. This does not apply to an LPFSA coupled with an HSA.
- For FSAs and HRAs, Employer will provide HQY with enrollment and full health plan claims data for the groups electronically on a regular basis. This provision does not apply to non-integrated FSA / HRA / DCRA.
- All plan or account related fees, surcharges, or taxes imposed by law on the operation of the plan (e.g.,

MA Health Safety Net) will be invoiced to the Employer (i.e., plan sponsor). Timely payment of this amount is a condition precedent to services.

5.1 File integration fees.

File integration enhances the overall experience through automating the way data is passed to HQY in connection with eligibility, payroll, and claim integration.

File types	Benefit eligible employee threshold per file	Implementation fee per file
FSA deduction file	0	None
Eligibility file	1,000	None

5.2 Custom communications and materials.

The Parties will agree to the form and contents of any custom communications or marketing materials and the fees associated therewith, which may change from time to time.

5.3 Other compensation.

Employer funds associated with the administration of HRA/FSA services (including pre-funding) are deposited in an omnibus processing account with a federally insured financial institution, titled "HealthEquity Omnibus Account for the Benefit of Employers" (or similar title). The account is not treated as a plan asset and is subdivided as HealthEquity determines appropriate to maintain separate records for each employer. Interest, if any, accrued in the account is retained by HealthEquity as part of its compensation for services to Employer.

Schedule C

Commuter Benefits

This Commuter Benefits Schedule to the Agreement between the Employer and HQY sets forth the terms pursuant to which HQY will provide administration services for qualified transportation fringe benefits (as described in 26 USC 132(f)) that Employer offers to its eligible employees (the "Commuter Benefits"), and is incorporated into and made a part of the Agreement.

1 HQY Duties.

Plan setup	<ul style="list-style-type: none"> • Provide an implementation questionnaire plan for Employer to choose among certain features and options, subject to availability on HQY's system. • Complete all required setup on the applicable platforms. <p><u>Limitations</u></p> <ul style="list-style-type: none"> • Employer is responsible for the review and compliance of the Commuter Benefits with applicable law. • HQY will not provide legal advice as to which options or features Employer may wish to implement or with respect to compliance with applicable law.
Eligibility	<ul style="list-style-type: none"> • Instruct Employer on how to provide timely accurate and complete eligibility information. • Employer must provide eligibility according to the standard file specification for Commuter Benefits.
Ongoing administration	<ul style="list-style-type: none"> • HQY shall administer the Commuter Benefits using the applicable platform. • As part of the monthly services, HQY will: <ol style="list-style-type: none"> a. Provide a website through which members may place orders and review account details. b. Process eligibility files. c. Process and fulfill monthly commuter orders. d. Prepare payroll export file and monthly funding report. e. Process eligible reimbursement payments for cash reimbursement accounts.
Customer service	<ul style="list-style-type: none"> • HQY shall make available to members and staff a toll-free number (in the US) to access its Commuter Benefits service center. • Provide standard member communication materials in electronic format.
Management reports	<ul style="list-style-type: none"> • HQY shall provide online downloadable management reporting to Employer.

2 Employer Duties.

Plan setup	<ul style="list-style-type: none"> • Employer to complete an implementation questionnaire plan for Employer to choose among certain features and options, subject to availability on HQY's system.
Designate contact	<ul style="list-style-type: none"> • Employer shall designate at least one employee as the primary contact. • The contact must have familiarity with the Employer's commuter benefits offering; the contact shall provide HQY with advance notice before any changes to the Employer's commuter benefits offering become effective; the contact shall also be available to consult with HQY from time to time as reasonably necessary for HQY to provide the services described herein. For the avoidance

	of doubt, no change shall become effective unless and until accepted and programmed by HQY.
Provide data	<ul style="list-style-type: none"> • Employer shall be responsible for providing accurate, complete and timely data, including delivery addresses for fulfillment of fare media if Employer has assume sole responsibility for control of addresses. • HQY shall not be responsible for transit or other orders mailed to Employer-provided addresses that are inaccurate or otherwise invalid.
Eligible employees	<ul style="list-style-type: none"> • Employer shall notify HQY, or its designate, of new and terminated eligible employees according to the standard file specification. • A custom setup fee may apply if Employer cannot provide the data in the standard file specification required by HQY, or its designate.
Pre-Funding	<ul style="list-style-type: none"> • Employer is responsible for maintaining appropriate funding in a designated checking account from which HQY will pull on a monthly basis to cover monthly orders. • The account must also maintain sufficient funds to cover checks and direct deposit payments for manual cash reimbursement payments. • Employer hereby authorizes and directs HQY to pull the funds via ACH to cover the monthly orders and cash reimbursement payments contemplated herein.
Legal compliance	<ul style="list-style-type: none"> • Employer shall have sole responsibility for ensuring that the Commuter Benefits are provided in accordance with applicable law, including the accuracy and sufficiency of documents and notices concerning the Commuter Benefits.

3 Fees. Unless otherwise set forth herein, the fees for the Services under this Schedule shall be as set forth in the Order Form.

4 Term and Termination.

4.1 **Term.** The term of this Schedule shall begin on the Order Form Effective Date and continue through and including the Order Form Term (the "Initial Term"). This Schedule will thereafter automatically renew for additional 12-month terms unless either Party terminates this Schedule in accordance with Section 4.2.

4.2 **Termination for convenience.** Following the Initial Term, either Party may terminate this Schedule at any time, subject to providing 90 days' prior written notice.

5 Debit Card.

If Employer elects to offer a card program in connection with its Plan, HQY will administer the debit card as follows:

5.1 **Provision of Cards.** HQY will provide one (1) debit card ("Card") to each participant. Depending of program, additional Cards may be provided upon request for use by the participant's spouse and/or dependents who are over 18 years of age.

5.2 **Card Services.** HQY will update participant records, maintain account balance and deposit information, activate and deactivate Cards, respond to participant inquiries and provide appropriate notices of actions taken with respect to the Card.

5.3 **Payments.** Card transactions will be withdrawn against a participant's account and Employer shall reimburse HQY according to terms of Employer's funding arrangement or as otherwise agreed, as applicable.

5.4 **Improper Card Usage/Fraud.** Employer shall notify HQY immediately if Employer suspects or confirms any inappropriate or fraudulent Card usage. HQY will take reasonable action to investigate and resolve improper Card transactions that it becomes aware of in accordance with applicable law and regulations (e.g., by offsetting the ineligible expense against a proper expense). HQY may suspend a participant's Card until such issue is resolved. If HQY cannot correct the improper use, it will notify Employer and Employer shall be responsible to correct the transaction by adopting such measures as are required by applicable law and regulations (e.g., deducting the amount from the participant's wages).

5.5 **Lost or Stolen Cards.** HQY agrees to cancel, as soon as reasonably practicable, a participant's Card when the Card is reported as lost or stolen. HQY is not responsible for any transactions that occur prior to the request to cancel is received.

5.6 **Termination or Ineligibility.** HQY will deactivate a participant's Card as soon as reasonably practicable after receipt of notice from Employer that a participant has been terminated or is no longer eligible to participate under the Plan. HQY is not responsible for any transactions that occur prior to the request to terminate is received.

5.7 **Data Hosting; Right to Use Data.** All Card data resides on servers owned by or operated on behalf of HQY's service providers. Employer grants HQY and its service providers the right to receive, process and use such data to administer the Card program and provide related services to Employer and its participants, as well as the right to derive and use aggregate and statistical de-identified data obtained therefrom.

5.8 **Grant of License.** If applicable per the service agreement, Employer grants HQY and its service providers a non-exclusive, non-transferable, royalty-free license to use Employer's trademarks in connection with the Card program, in the forms and formats approved by Employer in connection with (i) the Card, (ii) periodic statements and (iii) participant communications regarding their accounts. The name of the financial institution that issues the Card, a website Uniform Resource Locator (URL) and a customer service phone number will be printed on each Card.

Schedule D

Employer Sponsored Programs

1. Employer's Responsibilities.

Employer is the benefit program sponsor and administrator. As such, only Employer has the power to waive, alter, breach or modify any of the terms and conditions of the program ("Program"), and Employer exercises all discretion, control or authority with respect to the disposition of the available benefits. As such, Employer shall:

- a. Ensure that the summary Program descriptions, Program documents and any other documentation relating to the Program are appropriately completed, are in compliance with all applicable laws, and are appropriately and timely adopted;
- b. Provide HQY with a complete copy of all summary Program descriptions and Program documents for our reference in connection with the provision of Services, which shall, among other things:
 - Designate what expenses are eligible for reimbursement under the Program;
 - Specify what information must be included on a receipt and/or claim form submitted by a participant to verify whether an expense is eligible under the Program; and
 - Designate the frequency of reimbursements made to participants under the Program (e.g., monthly, quarterly, annually).
- c. Distribute summary Program descriptions, summaries of material modifications and any other Program documentation to participants on a timely basis;
- d. Determine which individuals are eligible to participate in Employer's Program and provide HQY with accurate eligibility data in the prescribed electronic data file format;
- e. Provide accurate and timely changes to participant eligibility data, including, but not limited to, information that modifies a participant's eligibility or status (e.g., leaves of absence, termination), in the prescribed electronic data file format;
- f. Confirm the initial payroll claim reimbursement test file provided by HQY in a mutually agreed upon file format is compatible with Employer's designated payroll system. If multiple payroll claim reimbursement files are required (e.g., one file per Program if you have multiple Programs), additional fees may apply;
- g. Timely retrieve and process the data files made available by HQY from either the HQY website or a designated FTP site;
- h. Correct all errors in any data, files or other materials provided to us by you or on your behalf by your third party service providers. HQY do not audit data, files or other information provided by Employer or its third party service providers;
- i. Report any reimbursements made under the Program as taxable income for each participant;
- j. Timely pay all service fees;
- k. Provide participants with any required information if Employer elects to offer Run-Out under its Program. "Run-Out" is the period after the close of the Program period during which a participant may submit claims for eligible expenses incurred during the immediately preceding Program period;
- l. Manage access to the employer portal of HQY's website by Employer personnel based upon Employer's internal confidentiality and HIPAA privacy policies and procedures; and

- m. Comply with all applicable laws with respect to Employer's Program and make any required filings with the appropriate governmental agencies, including the IRS.

2. Term and Termination.

- a. Term. The term of this Schedule shall begin on the Order Form Effective Date and continue through and including the Order Form Term (the "Initial Term"). This Schedule will thereafter automatically renew for additional 12-month terms unless either Party terminates this Schedule in accordance with Section 2(b). Notwithstanding the foregoing, if the entire Agreement is terminated at any time, the term of this Schedule shall terminate as of the date on which the entire Agreement is terminated.
- b. Termination for Convenience. Following the Initial Term, either Party may terminate this Schedule at any time, subject to providing 90 days' prior written notice.

3. HQY's Responsibilities.

HQY has been engaged by Employer to provide certain administration services in connection with Employer's Program(s). Accordingly, Employer have authorized HQY to use its standard procedures for the provision of Services. HQY shall provide its Services in accordance with the framework of policies, interpretations, rules, practices and procedures as set forth in the Program documents, and as otherwise mutually agreed upon or as directed by Employer. HQY shall:

- a. Provide Employer with a set of electronic file specifications for the delivery of data to HQY;
 - b. Process initial and ongoing eligibility data files submitted by Employer or on Employer's behalf by a third party service provider (e.g., payroll provider) in the prescribed electronic data file format;
 - c. Make a payroll claims reimbursement file available to Employer for download from HQY's website or, if applicable, via a designated FTP site, in a mutually agreed upon electronic data file format on the frequency (e.g., weekly, bi-weekly, monthly) determined by Employer;
 - d. Process claims received from participants;
 - e. Administer Run-Out, if applicable, subject to ongoing payment of service fees;
 - f. Provide Employer with access to HQY's website where Employer may:
 - View, access and download standard reports (e.g., eligibility reports, claims activity reports and payroll claims reimbursement reports);
 - View individual participant transactions; and
 - Access to HQY's online communications gateway and download standard electronic communication material at no additional charge. Customized items may be provided for an additional fee, plus charges for applicable bulk sales, taxes, shipping and handling;
 - g. Provide client service representatives who are available to answer participant phone calls during HQY's normal customer service hours;
 - h. Provide participants with 24/7 access (excluding scheduled maintenance) to HQY's website and interactive phone system, where participants can access information regarding their account;
 - i. Participate in employee education meetings and benefits fairs for an additional charge; and
 - j. Add Employer's logo and/or name on the participant website upon request.
- ## 4. Fees. Fees for the Services under this Schedule shall be as set forth in the Order Form.

Annex 1

Business Associate Agreement (BAA)

1 Scope.

This Business Associate Agreement (“BAA”) shall only apply to those services provided by Business Associate to Covered Entity (each defined below) as described in the Master Services Agreement (“Agreement”).

2 Definitions.

2.1 Catch-all definition. The following terms, when used in this BAA, shall have the meaning given in the Health Insurance Portability and Accountability Act of 1986 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act, and the regulations thereunder: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

2.2 Specific definitions.

- “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this BAA, shall mean HealthEquity, Inc.
- “Covered Entity” shall have the same meaning as the term “Covered Entity” at 45 CFR 160.103, and in reference to the party to this BAA, shall mean the Employer.
- “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

3 Obligations and Activities of Business Associate.

3.1 Business Associate agrees to:

- (a) Not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by the Agreement;
- (c) Report to Covered Entity any use or disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware. For this purpose, a Breach is reportable to the Covered Entity without regard to whether, in Business Associate’s determination, any harm will result from the Breach;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- (e) Make available Protected Health Information in a Designated Record Set to the Individual or the Individual’s designee as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;
- (f) Make any amendment(s) to Protected Health Information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.526. If the Business Associate receives directly from the Individual a request to amend the Protected Health Information that is within the Business Associates’ control, the Business Associate shall make such amendments within 30 days of the written request to the extent such request is not inconsistent with the existing designated

record sets (e.g., change of an Individual's identifiers such as Date of Birth will be considered inconsistent.) Any inconsistent request will be forwarded to Covered Entity for Covered Entity's determination of whether to amend the Individual's record;

- (g) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528. If Business Associate receives a request for an accounting of disclosures directly from the Individual, Business Associate shall promptly forward that request to the Covered Entity and make available the requested records to Covered Entity within 30 days from the receipt;
- (h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

- 3.2 The Parties acknowledge that probes and reconnaissance scans are commonplace in the industry and, as such, the Parties acknowledge and agree that, to the extent such probes and reconnaissance scans constitute Security Incidents, this section constitutes notice by Business Associate to the Covered Entity of the ongoing existence and occurrence of such Security Incidents for which no additional notice to the Covered Entity shall be required. Probes and reconnaissance scans include, without limitation, pings and other broadcast attacks on Business Associate's firewall, port scans, and unsuccessful log-on attempts, as long as such probes and reconnaissance scans do not result in unauthorized access, use or disclosure of Protected Health Information.

4 Permitted Uses and Disclosures by Business Associate.

- 4.1 Business Associate may only use or disclose Protected Health Information as necessary to perform the services described in the Agreement.
- 4.2 In addition to other permissible purposes, the Business Associate is authorized to use Protected Health Information to de-identify the information in accordance with 45 CFR 164.514(a)-(c) for internal analysis of operational efficiencies, and to determine if additional services should be developed or offered to users.
- 4.3 Business Associate may use or disclose Protected Health Information as Required By Law.
- 4.4 Business Associate agrees to make Uses and Disclosures and requests for only the Minimum Necessary Protected Health Information to accomplish the purpose of the Use, Disclosure or request.
- 4.5 Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific Uses and Disclosures set forth below.
- 4.6 Business Associate may use Protected Health Information as necessary for the proper management and administration of its business or to carry out its legal responsibilities, provided the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 4.7 Business Associate may provide data aggregation services relating to the Health Care Operations of the Covered Entity.

5 Responsibilities of Covered Entity.

- 5.1 Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.
- 5.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.
- 5.3 Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of Protected

Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

- 5.4 Covered Entity shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information that it may access from Business Associate's system, and to ensure that the Use or Disclosure of such Protected Health Information comply with the HIPAA Rules. Business Associate shall not be responsible for enforcing such Covered Entity-developed safeguards.
- 5.5 Covered Entity shall ensure that the data it transmits, or direct another entity to transmit, to Business Associate, is timely, complete, and accurate, and will not cause a Security Incident or commit a Breach.

6 Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except for data aggregation or management and administration and legal responsibilities of the Business Associate in accordance to the Agreement.

7 Term and Termination.

- 7.1 Term. The Term of this BAA shall be effective no later than the effective date of the Agreement ("Effective Date") and, except as provided in section 7.3, shall terminate coincident with the termination of the Agreement, or on the date Covered Entity terminates for cause as authorized in section 7.2, whichever is sooner.
- 7.2 Termination for Cause. Business Associate authorizes the termination of this BAA by Covered Entity, if Covered Entity determines Business Associate has violated a material term of this BAA and Business Associate has not cured the Breach or ended the violation within the time specified by Covered Entity.
- 7.3 Obligations of Business Associate upon Termination. Upon termination of this BAA for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - (a) Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - (b) Destroy physical embodiment or delete electronic embodiment of the remaining Protected Health Information that the Business Associate still maintains in any form;
 - (c) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;
 - (d) Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out in sections 3.1(e) and 3.1(f) above which applied prior to termination; and
 - (e) Destroy or delete the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities. Data on backups will be destroyed through attrition.
- 7.4 Survival. The obligations of Business Associate under this Section shall survive the termination of this BAA or the Agreement.

8 Miscellaneous.

- 8.1 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- 8.2 Interpretation. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.

- 8.3 No Third Party Beneficiary Rights. This BAA is between Covered Entity and Business Associate and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party or parties.
- 8.4 Indemnification. The Parties agree that if the Agreement provides for indemnification under specified terms and conditions, then such indemnification shall extend to the same terms and conditions with reference to the duties and obligations set forth in this BAA.
- 8.5 Notices. The contact information provided in the Agreement shall be used for any notices under this BAA.

Rider

COBRA Administration Services

This Rider sets forth the following terms and conditions that are incorporated into the Agreement and Order Form to which they are attached for the provision of COBRA benefit administration. This Rider is entered into between Employer (as defined in the Agreement) and WageWorks, Inc. (“**WW**”). The terms and conditions in this Rider do not replace any of the terms and conditions contained in the Agreement, but in the event of a conflict between this Rider and the Agreement, this Rider shall control with respect to Employer and WW and the COBRA administration services provided herein. **BY ACCESSING HQY’S EMPLOYER PORTAL OR USING ANY SERVICES PROVIDED UNDER THIS RIDER, EMPLOYER AGREES THAT IT HAS READ THE GENERAL TERMS AND CONDITIONS, AND THIS RIDER, AND AGREES TO BE BOUND BY THE SAME.**

Employer has independently concluded that one or more of its group health plans are subject to the provisions of COBRA.

1 Definitions. For purposes of this Rider, the following definitions are included in addition to those in the Agreement:

- 1.1 “Administrative User” means an employee of Employer who is authorized to access and use the COBRA Portal to administer COBRA benefits established by or on behalf of Employer.
- 1.2 “COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and its associated regulations.
- 1.3 “COBRA Continuant” is a Qualified Beneficiary who has elected COBRA continuation coverage.
- 1.4 “COBRA Portal” means the WW web-based software applications to which Employer and/or Qualified Beneficiaries are granted access.
- 1.5 “Covered Employee” means an employee of Employer who is provided group coverage under an Employer group health plan identified on the Order Form.
- 1.6 “Party” or “Parties” shall have the meaning given to it in the Agreement but shall also specifically include WageWorks, Inc.
- 1.7 “Qualified Beneficiary” means an individual who is eligible to receive COBRA continuation coverage under an Employer group health plan identified on the Order Form.
- 1.8 “Services” means processing and administration of COBRA benefits by WW for Employer under this COBRA Rider.

2 Relationship.

The Parties acknowledge and agree that this COBRA Rider is solely between WW and Employer, and is independent of any relationship that either WW or Employer may have with an insurance carrier, third party administrator, benefits administrator, or any other third party. For purposes of this COBRA Rider, the term “Employer” shall mean Employer in its capacity as plan sponsor of one or more group health plans or employee welfare benefit plans.

The Parties also acknowledge and agree that WW shall have no responsibility for the funding of COBRA premium payments, and that WW’s obligations hereunder are subject to, and contingent upon, Employer’s accurate and timely compliance with the duties set forth in Section 4. In all events, Employer is responsible for compliance with COBRA and all other applicable law, including with respect to all notices, communications, and other documents prepared and distributed by WW, and WW’s COBRA administration process.

3 WW Duties.

Program setup	a. Conduct a welcome and implementation phone call with Employer to complete a
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	<p>program election questionnaire that includes Employer's COBRA program elections and desired COBRA Portal configurations.</p> <p>b. After all necessary information is received by WW, WW shall complete all required COBRA Portal configuration to match Employer's elections, provided, however, that WW will identify all elections that it cannot configure and work with Employer to resolve the configuration.</p> <p>c. Provide Administrative Users with training on how to use the COBRA Portal.</p>
Employer file integration	<p>d. Educate Administrative User on available methods for Employer to submit data or files to the COBRA Portal, e.g. qualifying event files, Covered Employee files, etc. Available options are: (i) manual entry on the COBRA Portal, (ii) upload a file in an approved format (.csv, .txt, or .xlsx), and (iii) have a third-party benefits administrator send WW a file in an approved format (.csv, .txt, or .xlsx).</p>
Takeover of existing COBRA Continuant	<p>e. Support transition from prior administrator of existing COBRA Continuant who have elected COBRA continuation coverage.</p> <p>f. Send a welcome letter to COBRA Continuant explaining the transition of services to WW, and payment coupons to COBRA Continuant.</p>
Ongoing monthly administration	<p>g. WW shall provide the following ongoing monthly administration Services, as applicable:</p> <ol style="list-style-type: none"> 1. Provide a website (the COBRA Portal) through which Qualified Beneficiaries may view program communications, make benefit elections, and process COBRA premium payments; 2. Provide a website (the COBRA Portal) through which Employer may view program information, access reports, and take the following actions <ul style="list-style-type: none"> • Allow Employer to manually enter qualifying events; and • View Qualified Beneficiary information, e.g. COBRA election status, communications mailed to the Qualified Beneficiary, and payment history; 3. Receive and process qualifying event files and, if elected by Employer, General-Notice-of-COBRA-Continuation-Coverage-Rights file; 4. Provide general communications to Qualified Beneficiaries, and provide required notices to Qualified Beneficiaries (subject to receipt of timely and accurate information from Employer); 5. Process COBRA elections received by mail from Qualified Beneficiaries and elections entered by Qualified Beneficiaries on the COBRA Portal, and send COBRA premium payment coupons to COBRA Continuant; 6. Process monthly COBRA premium payments received via mail or via the COBRA Portal; 7. Remit COBRA premium payments monthly to the Employer (or Employer's insurance carrier, if such additional service is elected by Employer); 8. Process COBRA terminations (process includes applicable conversion notifications if Employer's plan allows a conversion policy); 9. Work with Employer and carriers to resolve any escalated issues; and

	<p>Notify carriers of elections, terminations and coverage changes.</p> <p>Unless expressly stated otherwise in an addendum to this Rider, WW shall not administer any plan-specific rules that WW determines deviate from the minimum requirements under COBRA.</p>
State-Specific Services	<p>h. If Employer requests for WW to provide state-specific continuation coverage notices, other state-specific continuation services or wishes to offer COBRA benefits to non-qualified beneficiary populations (i.e. domestic partners, parents), Employer will notify WW in writing and, if such state-specific services are offered by WW, a separate, additional schedule may be provided with additional fees applicable to such schedule.</p>
Customer service	<p>i. WW shall make available to Qualified Beneficiaries a toll-free number (in the US) to access its COBRA service center.</p> <p>j. WW shall make available to Qualified Beneficiaries a toll-free fax number (in the US).</p>

4 Employer Duties.

Program setup	<p>a. Employer to provide all necessary information that includes Employer's COBRA program elections and desired COBRA Portal configurations.</p>
Designate contact	<p>b. Employer shall designate at least one employee as the primary contact who has familiarity with the Employer's COBRA benefits program; the contact shall provide WW with advance notice before any changes to the Employer's COBRA benefits program become effective and shall be available to consult with WW from time to time as reasonably necessary for WW to provide the COBRA administration services described herein. For the avoidance of doubt, no change shall become effective unless and until accepted and programmed by WW.</p>
Provide data	<p>c. Employer shall be responsible for providing WW with accurate, complete and timely data. WW's responsibility for sending required notifications to Qualified Beneficiaries and Covered Employees (if elected) is contingent upon Employer providing WW with accurate, complete, and timely information. Employer shall also provide periodic updates as set forth in Section 5.2 of this Rider. Employer is responsible for correcting errors in all data sent to WW. WW will not be responsible for any liabilities, penalties, or losses due to data or information that is untimely, inaccurate or otherwise invalid and Employer shall defend, indemnify and hold harmless the WW Group from and against all Losses asserted by any party who is not a party to the Agreement and arising out of Employer's breach of this Agreement, negligence or willful misconduct or arising out of any other cause related to this Agreement.</p> <p>d. To the extent that Protected Health Information ("PHI") (as defined in the HIPAA Regulations) is transmitted by Employer to WW or the COBRA Portal, Employer shall make any such transmission in a secure and encrypted manner, and in accordance with HIPAA, and other privacy rules and regulations.</p> <p>e. For any notice required by COBRA to be given to Covered Employees, or Qualified Beneficiaries, Employer shall provide all information required for WW</p>

	<p>to send the notices on behalf of Employer at least 7 business days prior to the date on which the notice is required to be given under COBRA. All such information must be provided to WW by manually entering the information into the COBRA Portal or by uploading an appropriate file using the required file format (.csv, .txt, or .xlsx).</p> <p>f. Provide plan and rate information for the new plan year at least 60 days in advance of the date on which the updates will become effective.</p>
Covered Employees	g. At least once annually, or more frequently if requested by WW, Employer will provide WW with its then current number of Covered Employees.
Employer access	h. Employer shall: (i) notify WW when an Administrative User's access is terminated (i.e. termination of employment); (ii) keep Employer and Employer's Administrative Users' passwords used to access the COBRA Portal confidential and secure; (iii) prohibit Employer and Employer Administrative Users from attempting to gain unauthorized access to the COBRA Portal and all related systems or networks; and (iv) implement prudent management controls with respect to Employer and Employer's Administrative Users' access to and use of the COBRA Portal, which include segregation of duties among multiple Administrative Users and dual approvals for key activities.

5 Fees. Unless otherwise set forth herein, the fees for the Services under this Rider shall be as set forth in the Order Form and shall be paid by the Employer. WW will invoice Employer directly on a monthly basis.

5.1 Provision of Eligibility by Employer.

Employer shall provide a good faith estimate of the total number of COBRA eligibles, which is equivalent to covered lives, during each plan year's open enrollment period and shall, prior to commencement of each plan year, submit a copy of the health insurance invoices (e.g., medical, dental, vision and/or EAP, if applicable) to substantiate the COBRA eligible (covered lives) count. If Employer does not substantiate the COBRA eligible count prior to the commencement of a plan year, the COBRA eligible count shall be increased by 20% over the prior plan year. If the COBRA eligible count changes by more than 20% during a plan year, Employer shall promptly notify WW and provide documentation necessary to substantiate such change. WW shall adjust the COBRA eligible count as of the first benefit month following receipt of substantiation of the change in COBRA eligible count for calculation of fees.

5.2 COBRA Premium Payment Fee.

In addition to the PEPM fee above, WW shall be entitled to an additional fee equal to 2% of the full COBRA premium amount for each COBRA Continuant each month. To the extent COBRA premium payments are processed via the COBRA Portal or via mail, WW shall retain 2% of the COBRA premium payment processed. To the extent the Employer pays or subsidizes all or a portion of the COBRA premium payment, Employer shall pay WW 2% of all amounts paid or subsidized by Employer. Notwithstanding the foregoing, in the event that a COBRA Continuant's COBRA coverage is extended due to a disability determination, the references to 2% in this Section 5.2(B) shall be 50% for the period of the disability extension.

5.3 Optional services.

Item	Fee
General Notice of COBRA Continuation Coverage Rights (new hire letter) on form approved by Employer*	\$3.00 per notice
State-specific Continuation Coverage Notices on form	As set forth in the applicable schedule

approved by Employer	referenced for State-specific services in Section 3.
Premium remittance to insurance carriers**	\$50 per carrier per month
Mail Open Enrollment Packets	Fee will be based on the option selected by Employer: \$8 (Partial) \$15 (Standard) \$22 (Custom)

*If Employer does not opt in to purchase the General-Notice-of-COBRA-Continuation-Coverage-Rights service, but still accesses it and sends it via the COBRA Portal, Employer will be charged a \$3.00 fee for each such General Notice of COBRA Continuation Coverage Rights (new hire letter) sent.

All program customizations (e.g., custom qualifying event file, custom General-Notice-of-COBRA-Continuation-Coverage-Rights file, additional communications, custom reports, etc.) requested by Employer will be evaluated and quoted on a case-by-case basis.

All requests to pull generated materials to prevent mailing will be subject to an additional fee of \$7.00 per envelope.

All costs associated with requests to mail notices overnight or via express mail will be passed on to Employer in addition to cost of time incurred at \$250/hour.

5.4 IRS and/or Department of Labor Audits.

In the event of an audit by the U.S. Internal Revenue Service or U.S. Department of Labor, all associated time, copying, postage or other costs will be charged to the Employer on a time and expense basis, with time billed at the rate of \$150/hour.

6 **Term and Termination.**

6.1 Term. The term of this Rider shall begin on the Order Form Effective Date and continue through and including the Order Form Term (the "Initial Term"). This Rider will thereafter automatically renew for additional 12-month terms unless either Party terminates this Rider in accordance with Section 6.2. Notwithstanding the foregoing, if the entire Agreement is terminated at any time, the term of this Rider shall terminate as of the date on which the entire Agreement is terminated.

6.2 Termination for convenience. Following the Initial Term, either Party may terminate this Rider at any time, subject to providing 90 days' advance written notice.

6.3 In addition to the termination rights set forth in the Agreement, WW may terminate this Rider upon the occurrence of any of the following:

- 6.3.1 Misuse of the COBRA Portal;
- 6.3.2 Failure by Employer to pay fees when due; and
- 6.3.3 Failure to provide timely, accurate, and complete data in the agreed upon-format.

Rider

Direct Billing Services

This Rider sets forth the following terms and conditions that are incorporated into the Agreement and Order Form to which they are attached for the provision of direct billing services. This Rider is entered into between Employer (as defined in the Agreement) and WageWorks, Inc. (“**WW**”). The terms and conditions in this Rider do not replace any of the terms and conditions contained in the Agreement, but in the event of a conflict between this Rider and the Agreement, this Rider shall control with respect to Employer and WW and the direct billing services provided herein. **BY ACCESSING HQY’s EMPLOYER PORTAL OR USING ANY SERVICES PROVIDED UNDER THIS RIDER, EMPLOYER AGREES THAT IT HAS READ THE GENERAL TERMS AND CONDITIONS, AND THIS RIDER, AND AGREES TO BE BOUND BY THE SAME.**

This Direct Billing Rider sets forth the direct billing services to be provided by WW to Employer and is incorporated into and made a part of the Agreement.

1 Definitions.

- 1.1 “DB Administrative User” means an employee of Employer who is authorized to access and use the Direct Billing Portal to manage direct billing benefits established by or on behalf of Employer.
- 1.2 “DP Participant” is an employee or former employee of Employer who Employer has indicated to WW is eligible for direct billing services.
- 1.3 “Direct Billing Portal” means all web-based software applications to which Employer and/or DB Participant are granted access in connection with the direct billing Services.
- 1.4 “Services” means direct billing related benefits administered by WW for Employer under this Direct Billing Rider.

2 Relationship.

The Parties acknowledge and agree that this Direct Billing Rider is solely between WW and Employer, and is independent of any relationship that either WW or Employer may have with any insurance carrier, third party administrator, benefits administrator, or any other third party. For purposes of this Direct Billing Rider, the term “Employer” shall include Employer in its capacity as plan sponsor of one or more group health plans or employee welfare benefit plans.

Employer acknowledges and agrees that WW’s obligations hereunder are subject to, and contingent upon, Employer’s accurate and timely compliance with the duties set forth in Section 4. In all events, Employer is responsible for compliance with applicable law (including the Consolidated Omnibus Reconciliation Act of 1985, as amended) and the review and approval of WW’s Direct Billing documents and templates, and WW’s Direct Billing administration process.

The Parties also acknowledge and agree that WW shall have no responsibility for the funding of any premium payments on behalf of DB Participants.

3 WW Duties.

Program setup	<div>a. Conduct a welcome and implementation phone call with Employer to complete a program election questionnaire that includes Employer’s Direct Billing program elections and desired Direct Billing Portal configurations.</div> <div>b. After the completed and executed program election questionnaire is received by WW, WW shall complete all required Direct Billing Portal</div>
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	<p>configuration to match Employer's elections, provided, however, that WW will identify all elections that it cannot configure and work with Employer to resolve the configuration.</p> <p>c. Provide DB Administrative Users with training on how to use the Direct Billing Portal.</p>
Employer file integration	<p>d. Educate DB Administrative User(s) on available methods for Employer to submit data or files to the Direct Billing Portal, e.g. Direct Bill Import & Changes Specification files. The available options for data submission are: (i) manual entry on the Direct Billing Portal, (ii) upload a file in an approved format (.csv, .txt, or .xlsx), and (iii) have a third-party benefits administrator send WW a file in an approved format (.csv, .txt, or .xlsx).</p>
Takeover of existing DB Participants	<p>e. Support transition from prior administrator of existing DB Participants.</p> <p>f. Send a welcome letter to existing DB Participants explaining the transition of services to WW.</p> <p>g. Send payment coupons to existing DB Participants.</p>
Ongoing monthly administration	<p>h. WW shall provide the following ongoing monthly administration Services, as applicable:</p> <ol style="list-style-type: none"> 1. Provide a website (the Direct Billing Portal) through which DP Participants may view program communications, and process direct billing payments; 2. Provide a website (the Direct Billing Portal) through which Employer may view program information, access reports, and take the following actions <ul style="list-style-type: none"> • Upload Direct Bill Import & Changes Specification files, or manually enter information about DB Participants • View DB Participant information, e.g. communications mailed to the DB Participant, and payment history; 3. Receive and process Direct Bill Import & Changes Specification files; 4. Provide general communications to DB Participants; 5. Send direct billing payment coupons to DB Participants; 6. Process direct billing payments received via mail or via the Direct Billing Portal; 7. Remit direct billing payments monthly to the Employer; and 8. Work with Employer to resolve any escalated issues.
Customer service	<p>WW shall make available to DP Participants a toll-free number (in the US) to access its direct billing service center.</p>

4 Employer Duties.

Program setup	a. Employer to complete a program election questionnaire that includes Employer's Direct Billing program elections and desired Direct Billing Portal configurations.
Designate contact	b. Employer shall designate at least one employee as the primary contact who has familiarity with the Employer's Direct Billing program; the contact shall provide WW with advance notice before any changes to the Employer's Direct Billing program become effective and be available consult with WW from time to time as reasonably necessary for WW to provide the Direct Billing services described herein. For the avoidance of doubt, no change shall become effective unless and until accepted and programmed by WW.
Provide data	<p>c. Employer shall have sole responsibility for providing WW with accurate, complete and timely data. WW's responsibility for sending communications and payment coupons to DB Participants is contingent upon Employer providing WW with accurate, complete, and timely information. Employer is responsible for correcting errors in any data sent to WW. WW is not responsible for any liabilities, penalties, or losses due to data or information that is untimely, inaccurate or otherwise invalid.</p> <p>d. To the extent that Protected Health Information ("PHI") (as defined in the HIPAA Regulations) is transmitted by Employer to WW or the Direct Billing Portal, Employer shall make any such transmission in a secure and encrypted manner, and in accordance with all applicable HIPAA privacy rules and requirements.</p> <p>e. In the event of rate or plan changes for DB Participants, Employer will provide updated rate information 60 days in advance of effective date.</p>
Employer access	f. Employer shall: (i) keep its and its DB Administrative Users' passwords used to access the Direct Billing Portal confidential and secure; (ii) prohibit its DB Administrative Users from attempting to gain unauthorized access to the Direct Billing Portal and any related systems or networks; and (iii) implement prudent management controls with respect to Employer and Employer's DB Administrative Users' access to and use of the Direct Billing Portal, which include segregation of duties among multiple DB Administrative Users and dual approvals for key activities.

5 Fees. Unless otherwise set forth herein, the fees for the Services under this Rider shall be as set forth in the Order Form.

Any program customizations (e.g., custom file types, additional communications, custom reports, etc.) requested by Employer will be evaluated and quoted on a case-by-case basis.

Any requests to pull generated materials to prevent mailing will be subject to an additional fee of \$7 per envelope.

All costs associated with requests to mail notices overnight or via express mail will be passed on to Employer in addition to cost of time incurred at \$250/hour.

6 Term and Termination.

6.1 Term. The term of this Rider shall begin on the Order Form Effective Date and continue through and including the Order Form Term (the "Initial Term"). This Rider will thereafter automatically renew for additional 12-month terms unless either Party has terminated this Rider in accordance with Section 6.2.

6.2 Termination for convenience. Following the Initial Term, either Party may terminate this Rider at any time, subject to providing 90 days' advance written notice.

6.3 In addition to the termination rights set forth in the Agreement, WW may terminate this Rider upon the occurrence of any of the following:

6.2.1 Misuse of the Direct Billing Portal;

6.2.2 Failure by Employer to pay fees when due; and

6.2.3 Failure to provide timely, accurate, and complete data in the agreed upon-format.